

CONCISE EXPLANATORY STATEMENT

(RCW 34.05.325 Public Participation—Concise Explanatory Statement)

Adoption of permanent rules to amend the Apple Maggot Quarantine under chapter 16-470 WAC

Reasons for Adopting the Rule

The Department has determined that municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes are host mediums for apple maggot because they may contain apples, crabapple, and both native and ornamental hawthorn and should be treated as regulated commodities subject to the apple maggot quarantine. The agency is proposing to modify the apple maggot quarantine to include these articles as regulated commodities and also allow the waste industries the ability to transport and dispose of municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes in the pest-free area under a special permit that stipulates the conditions necessary in order to protect the tree fruit industry from a potentially devastating invasive pest.

Another component of the proposed rule amendment adds the southeast portion of Lincoln County to the area under quarantine for apple maggot. During the 2015 trapping survey, the Department caught five apple maggot flies at three sites in the southeastern portion of Lincoln County. This finding of multiple catches of apple maggot and the lack of any local horticultural pest and disease board efforts to suppress apple maggot were considered when proposing the area for inclusion in the quarantine area. The initial area proposed for inclusion in the quarantine area included the cities of Davenport and Reardan. A subsequent revision of the rule language excludes these two cities.

Summary of the Public Comment Process

Hearings regarding the proposed apple maggot quarantine boundary amendment were held in Davenport on June 23, 2016 and November 8, 2016; in Yakima on May 12, 2016 and November 9, 2016; and in Olympia on November 10, 2016. The hearings were well attended.

Hearings regarding the proposed apple maggot quarantine regulated article and special permit amendments were held in Yakima on October 8, 2015 and November 9, 2016; in Olympia on October 9, 2015 and November 10, 2016; and in Davenport on November 8, 2016. The hearings were well attended.

Summary of Public Comments Received and the Department's Responses

The Department received testimony both supporting and opposing the rule changes. Below is a summary of the comments received and the Department's response to any concerns.

Summary of Opposing Testimony:

Subject: Nothing in the proposed rule addresses self-hauling of waste. How is the special permit going to impact the private residential haulers? Do self-haulers need to obtain a permit when they are bringing municipal solid waste or municipal green waste from the quarantine area for disposal in the pest-free area?

Response: Under the proposed permanent rule, self-hauling of residential waste from within the quarantine zone to the pest-free area is treated the same as commercial waste and is therefore prohibited. The Department will be mailing notification of the rule along with outreach material to residents and landscapers within the quarantine zone to explain the restrictions on the movement of waste and what options residents have for disposal. It is the expectation of the Department that county waste disposal facilities will monitor incoming self-haulers for compliance with the proposed rule. However, a commercial compost operator has offered to deploy green waste collection containers in the cities of Sprague and Harrington to provide additional options for green waste disposal to residents of those communities.

Subject: Soil should be included as a regulated article under the apple maggot and plum curculio quarantine because of its potential to harbor apple maggot pupae.

Response: The potential movement of apple maggot pupae in soil transported from the infested area to the pest-free area is consistent with the biology of the pest and therefore a legitimate concern. There are two probable pathways for the movement of apple maggot in soil; municipal waste and potted plants. Soil moving with municipal green waste (MGW) and municipal solid waste (MSW) is subject to the same rule requirements for treatment and mitigation as MGW and MSW, thereby reducing the risk of moving apple maggot in the waste stream through soil. The current rule that regulates MGW and MSW should contain the risk of moving apple maggot in soil that is mixed in with MGW or MSW, even though soil is not listed as a regulated commodity.

The addition of soil as a regulated commodity also raises the issue of the movement of apple maggot in the soil of potted plants. During the 2016 trapping season, several apple maggots were caught in traps placed close to recently planted, potted plants, suggesting a possible pathway for apple maggot pupae. However, if soil is included as a regulated commodity, then the transport of potted nursery plants from the quarantine area to the pest-free area will also be prohibited. Moreover, since the nursery industry could be adversely impacted by this rule change, the Department needs to do additional stakeholder work to determine the impact of this rule on the nursery industry both within and outside the state. Soil in potted plants will need to be addressed separately as a possible future rule change. The Department will raise this issue at the next Apple Maggot Working Group meeting held early in 2017.

Subject: How did the Department determine the location of the apple maggot quarantine boundary in Lincoln County? Why not quarantine the entire county or keep the quarantine zone closer to Sprague and Harrington where the apple maggot moths were caught?

Response: The Department administers an annual apple maggot trapping survey that places between 8,000 and 9,000 traps every year. The survey tracks the movement of the apple maggot, primarily in the pest-free area. The Apple Maggot Working Group (AMWG) is the governing body for the apple maggot certification program. The AMWG makes recommendations to the Director on changes to the area under quarantine after reviewing the previous seasons trapping data at an annual meeting. In recommending changes to the quarantine area, the AMWG and the Department also consider whether the county has an active county pest and disease board to control apple maggot. Lincoln County does not have an active board. Moreover, the AMWG and the Department reviews the abundance and distribution of host trees when evaluating the boundaries of the quarantine area. Apple, crabapple and native and ornamental hawthorn are all hosts for apple maggot.

The decision to add the southeast portion of Lincoln County to the apple maggot quarantine area was based on the 2015 apple maggot survey data and subsequently confirmed by the 2016 survey data. Harrington and Sprague were included within the quarantine area since apple maggots were trapped at both locations. No apple maggot flies were caught in traps placed in Davenport and Reardon during the 2015 or the 2016 trapping season. Since no apple maggots were trapped in the vicinity of these two communities the quarantine boundary did not include those cities. The area in Lincoln County west of the proposed boundary was not trapped in 2015, however traps placed west of Harrington in 2016 did not catch any apple maggot.

Periodically the AMWG reviews quarantine boundaries for the purpose of removing a specific area from the quarantine. Removal of the quarantine area is rare and is usually only considered in the presence of several seasons of negative trapping data and/or after control activities were implemented at apple maggot catch site locations. Host tree removal is one method of control.

When preparing quarantine proposals, the AMWG refers to the “Principles of Plant Quarantine”, a planning document issued by the National Plant Board for state agencies to use as a reference. The National Plant Board is an organization of agencies from each state that are responsible for regulating plant pests. Membership includes the Department.

Subject: We should not allow waste from the west side of the state when the risk of transporting apple maggot to the pest-free area is so great. It could be economically detrimental to the apple industry.

Response: The first priority of the Department, dictated by legislative mandate, is to protect the commercial apple industry of the state. However, the Department recognizes the increasing need for establishing suitable waste disposal facilities throughout the state due to Washington’s rapidly increasing population. The Department also appreciates the

contribution of commercial composting in reducing the municipal solid waste stream from our major cities and of providing a service to Washington agriculture in the form of commercial compost. Both industries are important to the economy of Washington State.

The Department in proposing these rule changes seeks to maximize the potential for protecting the commercial apple growers in the state while minimizing the impact on the commercial and government waste disposal communities of Washington State. In support of this goal, the Department contracted four expert consultants in September of 2015 to produce a Pest Risk Analysis to evaluate the risk of introducing apple maggot into the pest free area from the quarantine with the transportation of MGW. The current proposed rule is consistent with the results and recommendations of the Pest Risk Analysis and achieves the Department's goal of maximizing the protection of the apple industry while minimizing impact to the waste disposal community of Washington by allowing the transportation of waste through a special permit.

Subject: The rule amendments shouldn't apply to the transport of waste from the quarantine area when it is simply being transported through the pest-free area and is destined for disposal or treatment outside of the pest-free area.

Response: The proposed rule applies to the transportation of waste even if the waste is being transported from a quarantine area for disposal in another quarantine area but is transported through a pest-free area. The possibility of escape of the apple maggot into the pest-free area still exists if the waste is not adequately contained or there is spillage. If the waste is adequately contained and the hauler has a plan for responding to any spillage, then obtaining a special permit to haul waste through the pest-free area should not be difficult.

Subject: The definition of organic material is very broad and should be further defined as it could include products for animal feeding operations. Wood waste or bark would be considered under organic materials as well.

Response: The Department did not intend to restrict organic waste in the form of animal waste. The Department will consider redefining organic waste to exclude animal waste from the list of regulated commodities in future rule changes. Large amounts of leaves, bark and stems are mixed in with fruit contained in the organic waste stream. To differentiate one specific type of plant based organic waste from another for the purpose of regulating and monitoring would be unrealistic.

Subject: The Small Business Economic Impact Statement (SBEIS) does not quantify the actual economic impact of the mitigation measures identified in the rule amendments and that may be imposed by the special permit. The SBEIS incorrectly separates the two types of waste handling facilities in order to impose very different rules and to avoid a straight comparison of the impact on small business to big business.

Response: The rule proposal prohibits the movement of municipal solid waste and municipal green waste from the area under quarantine for apple maggot to or through the pest-free area. The Department is mitigating the impact of the prohibition by establishing special permits

that allow the transportation or disposal/treatment of these regulated commodities in the pest-free area. Permit conditions vary based on the category of waste. The permit conditions proposed are the least restrictive regulatory approach that meets the Department's requirement to prevent infestation.

The current rule amendment provides a number of options for mitigation particularly by the organic waste handlers. Quantifying specific costs will vary widely depending on which option the waste handler chooses and how they choose to implement the mitigation. The Department believes the SBEIS adequately addresses the impact of mitigation by fulfilling our statutory obligations to the apple industry of the state. Chapter 17.24 RCW mandates "a strong system" to protect the agricultural and horticultural industries of the state from the impact of insect pests. The Department is charged with implementing that mandate by excluding plant pests from the pest-free areas of the state through regulation of movement and quarantine of infested areas. Any new regulatory requirements or costs imposed on the waste industry are necessary to protect the tree fruit industry from the spread of apple maggot. The proposed rule amendments impose reasonable and necessary requirements on small businesses wanting to transport organic waste from the apple maggot quarantine area to the pest-free area.

The Department's decision to add MSW and MGW as regulated commodities subject to the quarantine for apple maggot is based on expert opinions relied upon by the Department, including the "Pest Risk Analysis." Both types of waste originating in the quarantine area present risk of introducing apple maggot into the pest-free area. By its very nature, the quarantine's purpose and effectiveness depend on the exclusion of such MSW or MGW from the pest-free area, whether or not the quarantine affects a large or a small business. Similarly, the Department has relied upon experts, including the Pest Risk Analysis, to conclude that any special permit conditions must be effective at reducing risk of infestation by apple maggot. The Department has concluded that any special permit conditions must be effective irrespective of whether the conditions impose a burden on a large or a small business.

The Department makes no distinction between large and small businesses for compliance with the proposed rule. Both are expected to comply equally with the rule. The Department imposes different restrictions on two types of waste - solid waste and organic waste - only when there is separation of organic waste from the solid waste stream. Separation of organic waste is an important distinction that lowers the risk of transporting apple maggot in solid waste. Moreover, solid waste that is compacted and then covered daily represents a significantly lower risk of transporting apple maggot than organic waste left out in the open to be turned, aerated, and actively composted over a several week period.

Summary of Supporting Testimony:

Subject: Most green waste collection in eastern Washington ends up in the area in Lincoln County outside the quarantine area and supports the boundary adjustment.

Subject: Redrafting the quarantine lines is an appropriate response to the detections found in Lincoln County given the absence of a pest board in the area.

Subject: The Department has a statutory obligation to maintain a strong system to protect the state's agricultural and horticultural producers from invasive pests such as the apple maggot.

Subject: Growers, packers, and marketers of tree fruit support the scientific approach based on assessing risk and appropriate control measures for the movement of municipal green waste (MGW) and municipal solid waste (MSW).

Subject: The apple industry strongly supports the addition of MGW and related material if it poses no risk of spreading apple maggot beyond the quarantine area.

Subject: The commercial apple production areas of central Washington have remained pest free due to an extremely thorough program of monitoring and eradication that has prevented apple maggot from becoming established in these areas. A key component of this effort is the quarantine that prevents potentially infested fruit and other related apple maggot sources from being brought into the pest free area.

Subject: The agricultural industry has an economic impact on Washington State. The industry relies heavily on our foreign markets. The agriculture industry understands how high the standards and how fragile some of the opportunities are to market our products to other countries. The ability for the apple industry to keep this area pest free is a huge benefit and a credit to all who have been involved in the process.

Subject: A "Pest Risk Assessment" has been performed for the Department. In this risk assessment, it has been determined that apple maggot (*Rhagoletis pomonella*), if transported in municipal green waste will with "low uncertainty" be introduced into "pest-free areas." The risk of introducing apple maggot into pest free areas is too great and this pest has the potential to seriously impact commercial apple production.

Response: The Department appreciates the support for this rule.

Differences between the Text of the Proposed Rules and the Text of the Rule as Adopted

There are no changes between the proposed and the adopted rule.